

**IN THE UNITED STATES DISTRICT COURT**  
**MIDDLE DISTRICT OF TENNESSEE**  
**AT NASHVILLE**

**JAMIE HELMS,**

Plaintiff,

v.

**APPLE TOM, LLC,**

Defendant.

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No.

JURY DEMANDED

**NOTICE OF REMOVAL**

Without submitting to the jurisdiction of this Court and without waiving any available defenses, including, without limitation, lack of jurisdiction, improper venue, statute of limitations, insufficient process, or insufficient service of process, Defendant Apple TOM, LLC (hereinafter “Apple TOM”), by and through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby files this Notice of Removal of the above-described action to the United States District Court for the Middle District of Tennessee at Nashville from the Circuit Court for Davidson County, Tennessee, where the action is now pending and states as follows:

1. This cause of action was commenced in the Circuit Court for Davidson County, Tennessee on January 23, 2020.
2. This is a civil action for damages arising out of alleged injuries sustained in a fall accident at the Applebee’s restaurant located at 718 Thompson Lane in Nashville, Tennessee.
3. The Complaint demands a judgment “for compensatory damages in an amount to be determined by a jury, but not to exceed \$75,000.00, for the damages and losses suffered by the Plaintiff as a proximate result of Defendants’ acts, omissions, negligence, statutory violations and/or other allegations set forth herein.” (Compl.).

4. On March 18, 2020, the Circuit Court for Davidson County entered an Order substituting Apple TOM, LLC for the improper entities named in the Complaint. (Exhibit 1).

5. Apple TOM filed an Answer, and the parties proceeded with discovery. (Exhibit 1).

6. On October 23, 2020, the Plaintiff sent the settlement demand attached hereto as Exhibit 2 to Apple TOM for \$150,000.00. The Plaintiff's settlement demand was Apple TOM's first notice the Plaintiff was seeking more than \$75,000.00, exclusive of interest and costs, in this lawsuit.

7. The United States District Court for the Middle District of Tennessee at Nashville has jurisdiction by reason of diversity of citizenship of the parties.

8. This suit is between citizens of different states. At the time of the commencement of this action in state court and since that time, the Plaintiff was and is a citizen of White House, Tennessee. (Compl. ¶ 1).

9. Defendant Apple TOM, LLC is a limited liability company organized under the laws of Kansas. The citizenship of a limited liability company for purposes of diversity jurisdiction is the citizenship of its members. *Delay v. Rosenthal Collins Group, Inc.*, 585 F.3d 1003, 1005 (6th Cir. 2009). None of the members of Apple TOM, LLC are citizens of Tennessee. Therefore, Apple TOM, LLC is not a citizen of Tennessee.

10. The matter in dispute exceeds \$75,000.00, exclusive of interest and costs, based on the Plaintiff's settlement demand letter for \$150,000.00. (Exhibit 2); *see Santos-Tiller v. Krispy Kreme Doughnut Corp.*, 2016 U.S. Dist. LEXIS 112786, at \*7 (E.D. Mich. Aug. 24, 2016) ("Plaintiff's \$117,500 settlement demand is a clear indication that she values her claim above \$75,000.") (citing *McPhail v. Deere & Co.*, 529 F.3d 947, 956 (10th Cir. 2008); *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002)); *see also Butler v. Rue 21, Inc.*, 2011 U.S.

Dist. LEXIS 25127, at \*19-20 (E.D. Tenn. Mar. 11, 2011) (denying remand where the plaintiff submitted a \$365,000 settlement demand). Accordingly, the jurisdictional amount is satisfied in this case.

11. This Notice is timely filed pursuant to 28 U.S.C. § 1446(b)(1) as the settlement demand letter is an “other paper” contemplated by 28 U.S.C. § 1446(b)(3). *Santos-Tiller*, 2016 U.S. Dist. LEXIS 112786, at \*7; *Butler*, 2011 U.S. Dist. LEXIS 25127, at \*20.

12. A copy of all pleadings and Orders served upon Apple TOM are filed with this Notice and attached hereto as Exhibit 1.

13. Apple TOM will give written notice of the filing of this Notice as required by 28 U.S.C. § 1446(d).

14. A copy of this Notice will be filed with the Clerk of the Circuit Court for Davidson County, Tennessee as required by 28 U.S.C. § 1446(d).

WHEREFORE, Apple TOM requests that this action proceed in this Court as an action properly removed to it.

Dated this the 23rd day of November, 2020.

Respectfully submitted,

**CARR ALLISON**

By: /s/ Chancey R. Miller  
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 23, 2020, I electronically filed this **NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

James P. McNamara  
810 Broadway, Suite 105  
Nashville, Tennessee 37203

**CARR ALLISON**

By: /s/ Chancey R. Miller  
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